The Honorable John C. Coughenour

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7        UNITED STATES DISTRICT COURT FOR THE
        WESTERN DISTRICT OF WASHINGTON
8                  AT SEATTLE

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10    UNITED STATES OF AMERICA,                    No. CR22-166 JCC

11                 Plaintiff,                      [~~PROPOSED~~] ORDER AUTHORIZING
                                                   RETESTING OF DRUG EXHIBIT IN
12          v.                                     ACCORDANCE WITH DEA
                                                   STANDARD PRACTICES
13    MATTHEW SCHLEY,

14                 Defendant.

15

16        The defendant, Matthew Schley, has moved for an Order authorizing the United

17   States Drug Enforcement Administration ("DEA") to produce Exhibit 7, as described in

18   DEA Form 113, "Chemical Analysis Report," LIMS Number: 2022-SFL7-03728, dated

19   March 23, 2023, for qualitative and quantitative retesting of the controlled substance

20   contained therein by NMS Labs, 2300 Stratford Avenue, Willow Grove, Pennsylvania

21   19090-0437. The government does not object to the retesting, but objected to certain

22   aspects of the proposed order. Defendant has agreed to waive any challenges to chain of

23   custody of Exhibit 7 incident to or arising from the defense examination, and will abide

24   by the following conditions under which the production shall occur.

25        Upon consideration of the motion, the positions of the parties with respect to the

26   contents of the order, and applicable law,

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UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

1      IT IS HEREBY ORDERED and DECREED in accordance with Federal Rule of

2 Criminal Procedure 16(a)(1)(E), that the Drug Enforcement Administration (DEA)

3 forensic laboratory shall extract samples from Exhibit 7, as described in DEA Form 113,

4 "Chemical Analysis Report," LIMS Number: 2022-SFL7-03728, dated March 23, 2023,

5 sufficient in its discretion to perform the qualitative and quantitative analyses; and

6      IT IS FURTHER ORDERED that the DEA forensic laboratory shall deliver, in a

7 manner it deems consistent with the type and quantity of controlled substance at issue,

8 and considering the defense expert's proximity to the DEA forensic laboratory, a

9 representative sample of the exhibit identified above to the defense expert, which has

10 been specifically identified as NMS Labs, 2300 Stratford Avenue, Willow Grove,

11 Pennsylvania 19090-0437. The defense expert shall possess and present in advance to the

12 DEA forensic laboratory, as a prerequisite to the delivery of the exhibit, a current and

13 valid DEA registration (DEA # RN0370306) sufficient to perform the qualitative and

14 quantitative analyses of the schedule of the controlled substance at issue, in accord and in

15 full compliance with the applicable DEA registration procedures, found at 21 C.F.R. §

16 1301.11 *et seq*.; and

17      IT IS FURTHER ORDERED that, upon delivery of the exhibit to the defense

18 expert, the expert shall sign and return by Registered Mail, Return Receipt Requested, all

19 accompanying forms (including Form DEA-12, "Receipt For Cash Or Other Items")

20 indicating receipt of the sample. The defense expert shall conduct the identification and

21 quantitative analysis (calculated as the hydrochloride salt form) ordered herein, and shall

22 provide the DEA forensic laboratory with a Declaration Under Penalty of Perjury

23 pursuant to 28 U.S.C. § 1746. The Declaration will state the quantity of each exhibit

24 consumed during analysis (if any) as well as the weight of each exhibit both received

25 from and returned to the DEA forensic laboratory. The Declaration shall be delivered to

26 the DEA forensic laboratory immediately upon completion of the analyses ordered

27 herein; and

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1    IT IS FURTHER ORDERED, in accordance with Fed. R. Crim. P. 16(b)(1)(B),

2    that the defendant shall provide the assigned Assistant United States Attorney with a

3    copy of the results or reports of the inspections and weighing provided under this Order;

4    and

5    IT IS FURTHER ORDERED that:

6    (1)    Any reweighing of the exhibit will be conducted first and separately from

7    any retesting involving qualitative and/or quantitative analyses of the laboratory exhibit,

8    if such a separate order is entered;

9    (2)    The defense shall coordinate with the Government a convenient date and

10   time for the analyses ordered herein, which date shall be within thirty (30) days of the

11   date of this Order;

12   (3)    The defense expert's analyses may be observed by a government law

13   enforcement officer, who reserves the right to videotape the analyses or any portion

14   thereof;

15   (4)    The defense expert is responsible for safeguarding the exhibit/samples,

16   preserving the chain of custody in a manner to faithfully protect its integrity;

17   (5)    The defense expert is responsible for repackaging each internal

18   sample/exhibit package into a heat-sealed evidentiary envelope, which heat-sealed

19   container shall be placed into a separate heat-sealed envelope, which shall be secured in

20   such a manner that tampering will be readily observable;

21   (6)    Upon completion of any other reanalysis, the defense expert shall return

22   any residual substance and its original packaging to the law enforcement officer or, where

23   applicable, to the originating DEA laboratory by secure method, not to include regular

24   mail. The method can be secured delivery services (i.e., barcode tracking systems)

25   offered by the United States Postal Service (such as registered mail) or by a commercial

26   carrier;

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(7)     All reanalysis must be completed within ten (10) calendar days from the date of receipt of the sample/exhibit. Return of any residual substance and its original packaging must occur within five calendar days following completion of the reanalysis.

(8)     Any failure to follow the aforementioned procedures will render the reanalysis results scientifically unreliable, as those terms are used in the Federal Rules of Evidence;

(9)     Any failure by the defense to maintain the proper chain of custody will not render Exhibit 7, as described in DEA Form 113, "Chemical Analysis Report," LIMS Number: 2022-SFL7-03728, dated March 23, 2023, inadmissible for this reason.

IT IS SO ORDERED this 15th day of July 2024.

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Hon. John C. Coughenour
Senior United States District Court Judge

Presented by:

*/s/ Erin H. Becker*
Erin H. Becker
Assistant U.S. Attorney

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